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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PHAM, TUAN

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,855

Applicant(s)

FRASER ET AL.

Examiner

TUAN A. PHAM

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 7/13/2005 have been fully considered but they are not persuasive.

In response to applicant's remark on page 9, the applicant argues that the Parsa et al. reference (U.S. No.: 6,757,319) does not teaches "adjust the modem carrier level" in claims 1, 16, and 20.

In response to applicant's arguments as stated above, the examiner respectfully disagrees with the applicant's argument. The applicant should refer to page 2 of the previous Office Action where the examiner interpreted the modem carrier level is a power level or signal strength (see col.9, ln.58-67, col.10, ln.1-8, col.11, ln.65-67, col.12, ln.1-3). For example, when the mobile 15 communicate with base station 13, the base station continually measures the power level of the signal received from the mobile 15. From this measurement, the base station will be adjusting the power level or signal strength to be in the frequency range to communicate with the mobile 15. The power level or signal strength is inherent to include the frequency carrier to transmit the data to the mobile 15. Therefore, the carrier level is inherent includes in the power lever or signal strength. Furthermore, the examiner noted that the applicant argue the examiner's allegation is specious or examiner's interpretation is broad. For this reason, the examiner would like to invite the applicant to amend the claim more clearly and

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specific like what did argues by the applicant in the remark, in page 9. Therefore, the teaching of Parsa et al. reference still read on.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a modem carrier level is generated by a processor in response to a call) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the reference of Mannering (U.S. No.: 6,137,839) does not teaches a wireless communication system, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Furthermore, the reference of Mannering also teaches a wireless system (see col.10, ln.63-67).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. **Claims 1, 5-8, 10-16, and 18-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Parsa et al. (U.S. Patent No.: 6,757,319, hereinafter, "Parsa").**

Regarding claims 1, 16, and 20, Parsa teaches a method, computer usable medium and wireless modem carrier level control system comprising (see figure 3):

means for receiving a modem carrier (i.e., transceiver) at a communication node (i.e., base station)(see figure 3, base station 13, transceiver 17, col.7, ln.12-20, col.9, ln.58-67),

means for measuring a modem carrier signal strength (see col.9, ln.58-67),

means for determining whether a modem carrier signal strength is at a prescribed level (i.e., threshold value)(see col.9, ln.58-67, col.10, ln.1-8), and

means for sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination (see col.9, ln.58-67, col.10, ln.1-8, col.11, ln.65-67, col.12, ln.1-3).

Regarding claims 5, 18 and 21, Parsa further teaches the method adjusting the modem carrier level in response to the modem carrier level instruction (see col.9, ln.58-67, col.10, ln.1-8).

Regarding claims 6 and 19, Parsa further teaches the method wherein the modem carrier level is adjusted more than one time during a communication session (see col.9, ln.58-67, col.10, ln.1-8). The base station continually measures the power level during the transmission. Therefore, the base station is adjusted the power level more than one time during a communication section.

Regarding claim 7, Parsa further teaches the method measuring the modem carrier signal strength comprises making a single measurement at a beginning of a data communication segment (see col.6, ln.47-67).

Regarding claim 8, Parsa further teaches the method measuring the modem carrier signal strength comprises making a plurality of measurements throughout a communication session (see col.9, ln.58-67).

Regarding claim 10, Parsa further teaches the method wherein the modem carrier is received from an analog modem (see figure 3, computer 23, PC 23 should be included a analog modem).

Regarding claim 11, Parsa further teaches the method wherein the modem carrier is received from a digital modem (see figure 5, transceiver).

Regarding claim 12, Parsa further teaches the method wherein the modem carrier is received from a modem located in a mobile communication device (see figure 3, mobile station 15, col.7, ln.15-20).

Regarding claim 13, Parsa further teaches the method wherein the wireless communication system is an analog mobile telephone system (see figure 3, Packet switched network 19, col.7, ln.21-29).

Regarding claim 14, Parsa further teaches the method wherein the wireless communication system is a digital mobile telephone system (see figure 3, RNC 11, col.7, ln.21-29).

Regarding claim 15, Parsa further teaches the method wherein the prescribed level is based on a reference modem carrier level at the communication node (see col.9, ln.58-67, col.10, ln.1-8).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 2-4, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parsa et al. (U.S. Patent No.: 6,757,319, hereinafter, "Parsa") into view of Mannering et al. (U.S. Patent No.: 6,137,839, hereinafter, "Mannering").

Regarding claims 2 and 17, Parsa teaches a method of wireless modem carrier level control system comprising (see figure 3):

means for receiving a modem carrier (i.e., transceiver) at a communication node (i.e., base station)(see figure 3, base station 13, transceiver 17, col.7, ln.12-20, col.9, ln.58-67),

means for measuring a modem carrier signal strength (see col.9, ln.58-67),

means for determining whether a modem carrier signal strength is at a prescribed level (i.e., threshold value)(see col.9, ln.58-67, col.10, ln.1-8), and

means for sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination (see col.9, ln.58-67, col.10, ln.1-8, col.11, ln.65-67, col.12, ln.1-3).

It should be noticed that Parsa fails to teaches a modem carrier level parameter. However, Mannering teaches such feature (see col.3, ln.10-16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Mannering into view of Parsa in order to transmit a higher bit rate for video as suggested by Mannering at column 4, lines 24-32.

Regarding claim 3, Mannering further teaches the modem carrier level parameter comprises a range between one and eight bits of the modem carrier level (see col.3, ln.10-16).

Regarding claim 4, Mannering further teaches the modem carrier level instruction comprises select frequency tones (see col.14, ln.30-36).

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parsa et al. (U.S. Patent No.: 6,757,319, hereinafter, "Parsa") into view of Westerlage et al. (U.S. Patent No.: 6,141,404, hereinafter, "Westerlage").

Regarding claim 9, Parsa teaches a method of wireless modem carrier level control system comprising (see figure 3):

receiving a modem carrier (i.e., transceiver) at a communication node (i.e., base station)(see figure 3, base station 13, transceiver 17, col.7, ln.12-20, col.9, ln.58-67),

measuring a modem carrier signal strength (see col.9, ln.58-67),

determining whether a modem carrier signal strength is at a prescribed level (i.e., threshold value)(see col.9, ln.58-67, col.10, ln.1-8),

sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination (see col.9, ln.58-67, col.10, ln.1-8),
and

measuring the modem carrier signal strength comprises making a plurality of measurements throughout a communication session (see col.9, ln.58-67).

It should be noticed that Parsa fails to clearly teach the communication session comprises one or more data communication segments and one or more voice communication segments. However, Westerlage teaches such features (see figure 5, col.9, ln.11-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Westerlage into view of Parsa in order to transmit both voice and data in communication system.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tuan A. Pham** whose telephone number is (571) 272-8097. The examiner can normally be reached on Monday through Friday, 8:00 AM-5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Curtis Kuntz can be reached on (571) 272-7499 and

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Art Unit 2643
September 16, 2005
Examiner

Tuan Pham


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